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SUPREME COURT OF THE STATE OF WASHINGTON

THURSTON COUNTY and BUILDING INDUSTRY ASSOCIATION
OF WASHINGTON, OLYMPIA MASTER BUILDERS, & PEOPLE
FOR RESPONSIBLE ENVIRONMENTAL POLICIES.

Petitioners,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD and 1000 FRIENDS OF WASHINGTON,

Respondents.

PETITIONER-INTERVENORS' OPENING BRIEF

RUSSELL C. BROOKS
WSBA No. 29811
ANDREW C. COOK
WSBA No. 34004
Pacific Legal Foundation
10940 NE 33rd Place
Suite 210
Bellevue, Washington 98004
Telephone: (425) 576-0484
Facsimile: (425) 576-9565

Attorneys for Building Industry Association of Washington, Olympia
Master Builders, and People for Responsible Environmental Policies

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INTRODUCTION

This case involves the Western Washington Growth Management Board's (hereinafter Growth Board or Board) failure to grant the proper deference owed to Thurston County under the Growth Management Act (GMA) when it determined certain areas and densities were needed within its urban growth areas (UGA) to sufficiently accommodate growth. *See Quadrant Corp. v. State Growth Management Hearings Board*, 154 Wn.2d 224, 238 (2005) (“[D]eference to county planning actions, that are consistent with the goals and requirements of the GMA supersedes deference granted by the APA and courts to administrative bodies in general.”); *see also* RCW 36.70A.110(2) (“Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.”); RCW 36.70A.320(3) (“[T]he board shall find compliance unless it determines . . . the state agency, county, or city is clearly erroneous in view of the entire record.”); RCW 36.70A.3201 (“[T]he legislature intends for the boards to grant deference to counties and cities in how they plan for growth.”). (Emphasis added.)

Here, Thurston County, in accordance with the discretion granted it under the GMA (RCW 36.70A.110(2)), considered local circumstances to establish areas and densities within its UGAs that are sufficient to

accommodate projected urban growth until 2025. In doing so, the County appropriately considered how much residential land should be left within the UGAs to ensure that an adequate supply existed to curtail escalating real estate and housing costs. *See* RCW 36.70A.110(2) (Counties “shall include areas and densities *sufficient* to permit the urban growth that is projected to occur in the county . . . for the succeeding twenty-year period,” and “have *discretion* in their comprehensive plans to make many choices about accommodating growth.”). (emphasis added); and RCW 36.70A.115 (Counties required to designate UGAs shall ensure that its comprehensive plans and development regulations provide *sufficient* capacity of land suitable for development to accommodate housing and employment growth.). (Emphasis added.)

Nevertheless, Respondent 1000 Friends argues too much land was included within the UGAs and seeks to constrict the urban growth area boundaries thereby severely limiting Thurston County’s ability to accommodate projected growth. Such an effect, at a time when housing and real estate prices are increasing at astronomical rates, would negatively impact many low-income renters and first-time home buyers. Moreover, reducing buildable, available land by constricting the UGAs would have a negative

effect on the economy by increasing real estate values, and driving up the cost of doing business in the County.

The Growth Board also erred when it found Thurston County's UGAs were too large by using the wrong statistics when analyzing future growth. Specifically, the Board incorrectly compared the amount of existing residential urban land within the County's UGAs in the year 2000, rather than in the year 2005, with projected demand for land through the year 2025. *See 1000 Friends of Washington v. Thurston County, et al.*, WWGMHB No. 05-2-0002 (Final Decision and Order, July 20, 2005) (FDO) at 35; Administrative Record (AR) 2573 (Finding the amount of residential land designated in UGAs exceeding demand).

Last, the Board erred when it ruled that Thurston County failed to zone different rural areas with appropriate varying rural densities. FDO at 18; AR 2556. The Board failed to recognize the County's comprehensive plan *did*, indeed, designate a number of rural areas with varying densities. Moreover, the County satisfied the GMA requirement of providing a variety of rural densities through the use of innovative techniques, such as clustering. *See* RCW 36.70A.070(5)(b) ("To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques."); RCW

36.70A.090 (“A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights.”).

Here, the Growth Board failed to grant Thurston County the proper deference owed when planning for growth. RCW 36.70A.3201 (“[T]he legislature intends for the boards to grant deference to counties . . . in how they plan for growth, consistent with the requirements and goals of this chapter.”).

Therefore, Intervenors-Building Industry Association of Washington, Olympia Master Builders, and People for Responsible Environmental Policies ask this Court to reverse the Growth Board’s Final Decision and Order.

Assignments of Error

1. The Growth Board erred in concluding that Thurston County’s comprehensive plan and development regulations failed to comply with RCW 36.70A.020(1)-(2), RCW 36.70A.110, and RCW 36.70A.130 when the County designated its urban growth areas based on the Washington Office of Financial Management’s population forecast and local circumstances.

2. The Growth Board erred in concluding that Thurston County's comprehensive plan and development regulations failed to comply with RCW 36.70A.070(5) for failing to provide for a variety of rural densities.

Issues Pertaining to Assignments of Error

1. Did the Growth Board fail to review Thurston County's urban growth area designations under the GMA's required deferential standard? (Assignment of Error 1.)

2. Did the Growth Board err by concluding that Thurston County's urban growth area designations were too large when the Board used incorrect figures to compare projected land supply with demand? (Assignment of Error 1.)

3. Did the Growth Board err by concluding that Thurston County's comprehensive plan violated the GMA by failing to provide for a variety of rural densities when: (1) the County's plan contained a number of rural areas zoned at varying densities, and (2) when the County's plan employed innovative land-use planning techniques allowed under the GMA to achieve the varying densities requirement? (Assignment of Error 2.)

4. Did the Growth Board err by creating a bright line rule and public policy determination that, to be considered a "rural density," rural

development can be no more intense than one dwelling unit per five acres?

(Assignment of Error 2.)

STATEMENT OF FACTS

Historical Factual Background

Thurston County has been among the fastest growing counties in the state over the last 40 years. AR 2083. The County experienced explosive double-digit population growth in each of the last five decades, ranging from 20 to 61 percent. AR 2084; AR 742. The Office of Financial Management projects Thurston County's population will increase at least another 35 percent by the year 2025. AR 742; AR 755.

Thurston County, in order to maintain the high quality of life attractive to new and existing residents, began planning for growth long before enactment of the GMA. AR 752. The County adopted its first comprehensive plan in 1975, which contained the County's initial planning document introducing policies for economic development, public services, transportation, and environmental protections. AR 752.

Thurston County later updated the plan in the 1980s, adding Washington's first urban growth boundaries. *Id.* In addition, the County began planning with its cities in order to better coordinate needed land development. *Id.* The County also recognized the need to plan for economic

development and affordable housing, and provide for various modes of transportation. *Id.* This early planning left the County well-positioned to respond to the new requirements imposed by the GMA in 1990. *Id.*

In 1995, the County updated its comprehensive plan by designating and classifying natural resource lands. *Id.* The County integrated this work into a rural zoning analysis that resulted in a stronger delineation of urban lands from rural lands in its zoning regulations. AR 752-53.

The County continues annually to amend its comprehensive plan and review it every seven years, as required by the GMA. AR 754; *see also* RCW 36.70A.130. In 2003, Thurston County complied with the GMA by amending and updating the comprehensive plan's Natural Resource Lands and Natural Environment chapters. AR 754.¹

On November 22, 2004, the Thurston County Commissioners adopted Resolution Number 13234 and Ordinance 13235, which amended the County's comprehensive plan and development regulations, respectively. AR 2542; FDO at 4. On January 21, 2005, 1000 Friends of Washington filed a petition for review with the Growth Board challenging both the Resolution and the Ordinance. FDO at 4; AR 2542. Specifically, 1000 Friends

¹ The County's 2004 amendments to the comprehensive plan and associated development regulations updating the remaining chapters are the subject of this case.

challenged the County's UGA designations for failing to comply with RCW 36.70A.020(1)-(2) (GMA Planning goals), RCW 36.70A.110 (designating urban growth areas), and RCW 36.70A.130 (reviewing comprehensive plans); AR 2542; AR 2544; FDO at 6. 1000 Friends argued that Thurston County's UGAs substantially exceeded the amount of land necessary to accommodate the Office of Financial Management's population forecast, even assuming a bright line 25 percent market factor. *Id.* 1000 Friends further challenged Thurston County's Ordinance and Resolution amending its comprehensive plan for not providing a variety of rural densities in its Rural Element section. *Id.*

Urban Growth Areas

As required under the GMA, Thurston County established a "Buildable Lands Program" to track its ability to accommodate population growth. AR 766; *see* RCW 36.70A.215. The Thurston Regional Planning Council (Planning Council)² is the lead agency for the Buildable Lands Program. The Planning Council develops population projections in each of the cities and UGAs based on the framework of the countywide population projection provided by the Office of Financial Management. AR 765. The

² The Planning Council is a 15-member intergovernmental board made up of local government jurisdictions within Thurston County, as well as the Washington State Capitol Committee and Intercity Transit. AR 765.

Planning Council then derives its own countywide population projections using a computer model that includes analysis of employment trends. *Id.* This Buildable Land Report provided an in-depth discussion analyzing how the amount of buildable land for future residential development is determined. AR 2383-84. Future land use is determined by assigning development assumptions to individual zoning districts based on the current comprehensive plan, recent development trends, and information provided by long-range planners from jurisdictions within the County. AR 2383.

Thurston County's study projected a countywide population of 334,261 by the year 2025. AR 2558. The County's forecast fell within one percent of the Office of Financial Management's new state medium range forecast and was adopted by reference in the comprehensive plan. *Id.* This population figure was then used by the County to determine the demand for urban residential land through the year 2025.

The County's buildable lands report looked at a 25-year projection of growth. According to the Report, 18,789 acres of undeveloped urban residential land remained in the year 2000. AR 1912. The Report further estimated that 11,582 acres would be developed by the year 2025, assuming the County experienced growth consistent with state and regional forecasts, and zoning remained consistent. AR 1912. Based on this information, the

County found that sufficient urban residential land supply existed to accommodate 25 years of projected population growth, from 2000 to 2025. AR 766. The Report found roughly 38 percent more land supply within the UGAs in 2025 than projected demand. *Id.*

The Report recognized that predicting future supply and demand is not an exact science. For example, the Report found that is impossible to predict how development would occur on an individual parcel.³ AR 2384. The Report further stated that each of the assumptions used in the analysis represented a wide range of variability. *Id.*

Designating Rural Densities

In addition to determining the size of its UGAs, Thurston County updated its comprehensive plan designating rural areas outside of the urban areas.⁴ AR 6-34; AR 724-818. The purpose of these designations was to

³ According to the Report, one of the difficulties of accurately predicting land supply and future demand is the result of oversized lots, or “legacy lots.” AR 2391. Legacy lots are urban lots that are oversized in terms of the current allowable minimum zoning density. *Id.* These oversized lots are still allowed even though zoning density requirements changed over time because the new zoning regulations are not applied retroactively to these lots. AR 2391-92. The Report found that almost 24 percent of the land developed in the UGAs is on oversized legacy lots, or lots greater than one acre. AR 2392.

In addition, the Report found that 18 percent of all land developed in urban areas is on oversized lots. *Id.* The Report further found that if the trends continued, land supply that could realistically be expected for future development would decrease at a far greater rate than anticipated. *Id.*

⁴ “Rural development” is defined under the GMA , in pertinent part, as “development
(continued...) ”

allow development that would support the rural aspect of the County and to protect natural resource areas of agriculture, forestry, aquaculture, mineral deposits, and fish and wildlife habitats. AR 773. The County designated six rural areas with varying densities. AR 778-783. The first was Rural Residential and Resource—One Unit Per Five Acres. AR 778. The purpose of this designation was to: (1) maintain the rural aspects of the County, (2) buffer environmentally sensitive areas and resource management areas from incompatible activities, and (3) to maintain a balance between human uses and the natural environment. *Id.* According to the comprehensive plan, residential use in these areas is likely to be limited due to critical areas and other “physical land capability constraints.” AR 778.

The County also designated five other rural areas with varying densities. These designations included: (1) McAllister Geologically Sensitive Area—one dwelling unit per five acres; (2) Residential—one unit per two acres; (3) Residential—one unit per one acre; (4) Residential—two units per one acre; and (5) Residential—four units per acre. AR 778-783. These designations are in the rural areas where residential development has already occurred. AR 780-782.

⁴ (...continued)

outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170.” RCW 36.70A.030(16).

STANDARD OF REVIEW AND BURDEN OF PROOF

1. The GMA Grants Thurston County Discretion When Planning for Growth

The GMA specifically provides deference to local governments planning under the GMA:

- (1) comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.
- (2) the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.
- (3) the board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board, and in light of the goals and requirements of this chapter.

RCW 36.70A.320 (emphasis added).

The Legislature, in 1997, amended the GMA to include a more deferential clearly erroneous standard and, in doing so, took the unusual step of codifying the statement of legislative intent:

In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. . . . The legislature finds that while this chapter requires local planning to take place within a framework of

state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.3201.

The GMA itself, and numerous cases interpreting it, make clear that the Act grants local officials broad discretion and ultimate responsibility and authority for determining how to apply its requirements to the particular circumstances of their communities. RCW 36.70A.320 & 36.70A.3201; *Quadrant*, 154 Wn.2d 233; *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 129 (2005); *Manke Lumber Co., Inc. v. Central Puget Sound Growth Management Hearings Board*, 113 Wn. App. 615, 626-27 (2002).

Although some earlier opinions hold that courts defer to Growth Board interpretations of the GMA, this Court has clarified that deference to county GMA actions overrides deference that would otherwise be granted to administrative agencies. *See Quadrant*, 154 Wn.2d at 238. ("In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the requirements of the GMA, supersedes deference granted to the APA and courts to administrative bodies in general.").

As discussed in-depth below, the Growth Board failed to apply the proper deferential standard of review to Thurston County's comprehensive plan and its designation of UGAs.

2. Administrative Procedure Act

Washington's Administrative Procedure Act (APA), RCW 34.05, provides the exclusive means for judicial review of agency action. *Diehl v. Western Washington Growth Mgmt. Hearings Bd.*, 153 Wn.2d 207, 213 (2004). Under the APA, the "burden of demonstrating the invalidity of agency action is on the party asserting invalidity." *Quadrant*, 154 Wn.2d at 233; *see also* RCW 34.05.570(1)(a) ("The burden of demonstrating invalidity of agency action is on the party asserting invalidity.").

The APA establishes "nine bases on which a party may challenge an agency's actions."⁵ *Quadrant*, 154 Wn.2d at 233; *see also* RCW

⁵ RCW 34.05.570(3) provides in pertinent part:

The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

- (a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its fact or as applied;
- (b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
- (c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(continued...)

34.05.570(3). As demonstrated below, the Growth Board's decision is an erroneous interpretation of the law, is outside of the Board's authority, is arbitrary and capricious, and is not supported by substantial evidence. Thus, the Board's decision should be reversed by this Court. RCW 34.05.570(3)(b)(d)(e) and (i). This Court reviews issues of law under the APA de novo. *Quadrant*, 154 Wn.2d at 233.

⁵ (...continued)

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary and capricious.

ARGUMENT

I

**THE URBAN GROWTH AREAS AND
DENSITIES WITHIN THE UGAs THAT
THURSTON COUNTY ESTABLISHED
WERE BASED ON PROPER POPULATION
PROJECTIONS AND LOCAL
CIRCUMSTANCES, THEREFORE
THE COUNTY'S ACTIONS WERE
NOT CLEARLY ERRONEOUS**

The Legislature enacted the GMA in 1990 with the recognition that “unplanned growth” threatened Washington’s quality of life. RCW 36.70A.010. However, unlike other statewide environmental statutes, such as the Shoreline Management Act, RCW 90.58, or the State Environmental Policy Act, RCW 43.21C, the GMA was spawned by controversy, not consensus. Richard L. Settle, *Washington’s Growth Management Revolution Goes to Court*, 23 Seattle U. L. Rev. 5, 34 (1999). As this Court has noted, “[t]his troubled beginning ‘spawned statutory ambiguity about the locus of the line between state mandate and local policy discretion’ in fashioning UGAs.” *Quadrant*, 154 Wn.2d at 232. Indeed, the most controversial GMA provision is the requirement to designate UGAs. *Settle, supra*, at 12.

According to the GMA, the purpose of designating UGAs is to direct the future population “into existing cities, urbanized areas, and other contiguous territory.” *Id.* at 13. The GMA requires each county that is fully

planning⁶ under the Act to designate an “urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.” *See* RCW 36.70A.110(1). The GMA also provides that an UGA “may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory characterized by urban growth” *Id.*

The GMA also sets the standard for determining the proper size of UGAs. The statute provides in pertinent part:

Based on the growth management population projection made for the county by the office of financial management [OFM], the county and each city . . . shall include areas and densities *sufficient* to permit the urban growth that is projected to occur in the county or the city for the succeeding twenty-year period.

RCW 36.70A.110(2). (Emphasis added.)

The Office of Financial Management is tasked with the duty of projecting a 20-year population growth for all counties. RCW 43.62.035. Specifically, the 20-year population projection for each county must be expressed “as a reasonable range developed within the standard state high and

⁶ Only counties with certain populations are required to fully plan by complying with all of the GMA requirements. *See* RCW 36.70A.040. Thurston County is one of the counties required to conform with all of the GMA requirements.

low projection.” *Id.* The middle projection range is the Office of Financial Management’s estimate of the most likely population projection. *Id.*

In addition to the above requirements, the Legislature amended the GMA in 2003 to reiterate the necessity that local governments provide sufficient land supply within UGAs to meet housing demands and employment growth. *See* RCW 36.70A.115; Substitute Senate Bill 5602, Chapter 333 § 1, 2003 Laws. The statute provides in pertinent part:

Counties and cities . . . shall ensure that, taken collectively, adoption of amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth.”

RCW 36.70A.115.

As discussed in greater length below, the GMA also grants local governments discretion in setting the size of their UGAs through use of “land market supply factors.” RCW 36.70A.110(2) (“In determining this [market] factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.”).

Combined, these statutes demonstrate the Legislature’s intent that counties and cities required to designate UGAs must provide sufficient land within their boundaries to accommodate housing demands and employment

growth. At the same time, the Act provides local jurisdictions with discretion in setting the size of their UGAs based on local circumstances. *See* RCW 36.70A.110(2). Moreover, the GMA does *not* provide a bright line rule determining how much land within county's UGAs over a 20-year planning cycle is excessive.⁷ Instead, the GMA grants local governments discretion in setting the size of their UGAs. For example, the GMA provides discretion by allowing counties to designate more residential land within their UGAs than projected demand may indicate is needed to accommodate future growth. *Id.*⁸ Moreover, the GMA section discussing UGAs uses broad, vaguely written requirements. However, this much is clear:

- Counties shall provide sufficient areas and densities to permit urban growth over a 20-year period;
- Counties shall base the size of their UGAs on the Office of Financial Management's 20-year population projection range;

⁷ 1000 Friends argued to the Board that any county with UGAs containing 25 percent more residential land than projected growth, i.e., a 25-percent market factor over a 20-year planning horizon, is *per se* a violation of RCW 36.70A.110(2). *See* FDO at 18; AR 2556. However, the GMA does not set out a bright line rule indicating when a county has designated too much residential land within its UGAs over a 20-year planning period. Moreover, the Growth Boards do not have authority to set such bright line rules. *See Viking Properties*, 155 Wn.2d at 129 (growth boards do not have authority to create public policy or bright line rules).

⁸ See further discussion regarding market factors in Section III.B.1, *infra*.

- Counties may allow more residential land than projected demand within its UGAs over the 20-year period using market factors based on local circumstances
- Counties shall provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth; and
- Counties are granted discretion in making many choices about accommodating growth.

RCW 36.70A.110(2) & RCW 36.70A.115.

Here, the Growth Board erred by expansively interpreting the GMA and failing to provide the proper discretion owed to Thurston County in designating the size of its UGAs. Thurston County, based on the Office of Financial Management's 20-year population projections, and through detailed analysis of land supply and demand, properly demonstrated that its UGAs included "sufficient areas and densities" to accommodate future projected growth. *See* RCW 36.70A.110.

For example, Thurston County based the size of its UGAs on the Buildable Lands Report prepared by the Planning Council. AR 2370. The Planning Council used the population projection in line with the Office of Financial Management's middle range projection. AR 2558. The County also provided an in-depth discussion explaining how it provided sufficient areas and densities within its UGAs. *See* AR 2383-2389. Specifically, the County

determined the amount of land available for future residential, commercial, industrial, and government/institutional development by comparing current and future land uses of individual tax parcels. AR 2383-2384. Based on assumptions for each tax parcel, the County then compared land supply versus projected population to determine whether sufficient urban land supply existed for residential development. AR 2385.

Specifically, the County found the supply of urban residential land in the year 2000 (18,789 acres) was sufficient to meet the demand in the year 2025 (11,582 acres).⁹ AR 2377-78. Based on this detailed analysis, the County determined that the UGAs included sufficient and therefore an acceptable amount of urban residential land to meet projected growth. *Id.*

The Buildable Lands Report also provided an in-depth discussion explaining how the County, based on local circumstances, met the GMA's requirement of providing sufficient densities within the UGAs. AR 2380; AR 2386-88. For example, between 1996 and 2000 (the most recent data in the

⁹ As discussed in greater length below, Thurston County was planning for a 20-year horizon beginning in the year 2005. The Buildable Lands Report that it relied upon was prepared in 2003. AR 766. Although the County used a 25-year planning horizon, the Board should not have used these figures to determine compliance with the GMA. Instead, the Board should have compared the amount of urban residential land supply that existed *in 2005* with the projected demand through the year 2025. Instead, the Board incorrectly compared the amount of urban residential land existing in the *year 2000* with projected demand for land through 2025. Using these incorrect figures, the Board came to the erroneous conclusion that Thurston County's UGAs provided significantly more land than projected growth called for.

Report) the County achieved a net residential density for cities and towns of 6.02 units per acres. AR 2380. During the same time period, net density for single-family development in the urban areas was 4.58 units per acre. *Id.* For multi-family development, the net density was 16.91s unit per acre. *Id.* Based on these figures, the County found it was providing sufficient densities within its UGAs.

The Buildable Lands Report also found that, based on local circumstances, net densities within the unincorporated urban growth areas of Lacey, Olympia, and Tumwater were lower due to development activity occurring on “legacy lots” in older subdivisions. AR 2389. These so-called “legacy lots” are oversized urban lots that are larger than are permissible under current zoning regulations and which are unlikely to be redeveloped or further subdivided. *Id.* The Buildable Lands Report determined that these legacy lots had a significant impact on meeting higher densities.¹⁰ *Id.* Despite this detailed analysis, Thurston County warned that it could not predict how each and every possible parcel would be developed in the future and that each parcel carried with it a wide range of variability. AR 2384.

¹⁰ As discussed at greater length below, legacy lots significantly affected Thurston County’s ability to predict future land supply based on the uncertainties of whether the larger lot sizes would be subdivided and redeveloped during the 20-year planning process.

Therefore, Thurston County, based on local circumstances, provided sufficient areas and densities within its UGAs to meet projected growth. More specifically, Thurston County neither provided too much land to residential growth with its UGAs, nor did it establish varying densities in rural areas that failed to comply with the GMA. First, Thurston County's population projection was in line with the Office of Financial Management's medium projected range. AR 765. Moreover, Thurston County properly set the size of its UGAs based on a wide variability of legitimate assumptions, and local circumstances, i.e. market factors. Therefore, based on the discretion granted to it under the GMA, Thurston County satisfied the Act's requirement of providing sufficient areas and densities to permit growth over a 20-year planning period.

**A. Thurston County Included a Reasonable Land
Market Supply Factor in Setting the Size of Its UGAs**

The Board also erred when it found that Thurston County improperly included a market factor in setting the size of its UGAs. FDO at 22; AR 2560. The Board's decision is not supported by the evidence. RCW 34.05.570(3)(e).

Counties are allowed to include more land within their UGAs than projected demand. *See* RCW 36.70A.110(2). Specifically, the GMA provides in relevant part:

[a]n urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

RCW 36.70A.110(2). (Emphasis added.)

Land supply market factors provide local governments flexibility in sizing their UGAs by allowing them to designate UGA boundaries that exceed the minimum “areas and densities” projected for demand. *See* Brent D. Lloyd, *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning Under the Washington State Growth Management Act*, 36 Gonz. L. Rev. 73, 118 (2001).

Although the term market factor is not defined, it “[o]stensibly . . . represents the estimated percentage of net developable acres contained within a UGA that, due to idiosyncratic market factors, is likely to remain undeveloped over the course of the twenty-year planning cycle.” *Id.*; *see also* Keith W. Dearborn and Ann M. Gygi, *Planner’s Panacea or Pandora’s Box: A Realistic Assessment of the Role of Urban Growth Areas in Achieving Growth Management Goals*, 16 U. Puget Sound L. Rev. 975, 994-95 (1993). (Emphasis added.)

Specifically, a market factor recognizes that land may not be put to its maximum use or be developed during the 20-year planning cycle. For example:

Property may be held out from development or redevelopment because of property owner preference, cost, stability, or quality of the existing neighborhood, etc. Other properties are marginal for residential development because of their location adjacent to a rail line, power substation, industrial area, or the like. In some instances, properties will be inappropriate for development or redevelopment because of their cultural resource significance (e.g., archaeological or historical sites). Finally, some properties will be developed at less than maximum zoned density because of neighborhood opposition, permit requirements, market demand, or financing difficulties. Each of these scenarios occurs frequently enough that the net developable acreage determined by a county's land capacity analysis is not necessarily an accurate indicator of how much land will be necessary to accommodate projected growth.

Lloyd, *supra*, at 118-19; see also Dearborn & Gygi, *supra*, at 994-995 (emphasis added).

The Legislature's intent of amending the GMA to allow for the use of market factors was undoubtedly to provide counties greater flexibility in sizing UGAs. See Lloyd, *supra*, at 120. The purpose of using a market factor is to ensure counties have enough land supply in order to accommodate projected urban growth, "despite the uncertainties of future development." *Id.* at 119. By allowing for more land "beyond the minimum necessary to meet the

forecast demand for the planning period, a market factor reduces inflationary pressure on land prices.” Dearborn & Gygi, *supra*, at 995.

As one commentator noted, a market factor permits flexibility for “unanticipated choices of individuals and firms who may acquire land in excess of the estimated need, and [the market factor] allows for land which may be held out of use because of legal complications which make the land unavailable for immediate development.” *Id.* In addition, market factors discourage “a monopolistic market structure on behalf of builders, developers, and real estate investors.” *Id.* If less land is available for development, correspondingly the market becomes “increasingly less competitive as it becomes dominated by fewer landowners.” *Id.*

Thurston County determined that it was nearly impossible to properly estimate the amount of land that would remain over the 20-year planning period. AR 2384; AR 2391-92. Recognizing this difficulty, the County designated more land within the UGAs to provide for a cushion in order to meet the demands of projected growth. AR 766-67. In doing so, Thurston County sufficiently explained in the Buildable Lands Report the various market factors contributing to its need to provide more urban residential land supply than projected demand.

For example, the Buildable Lands Report specifically discusses a number of potential scenarios causing certain parts of the City of Lacey to achieve higher densities, while at the same time causing other portions of the City to achieve lower densities. AR 2387. Similarly, the Report discusses possible scenarios for the varying densities within the County's UGAs. Specifically, the Report opines that lower densities within Thurston County's unincorporated UGAs are caused by the lack of available sewer and water infrastructure to support denser growth. AR 2389.

The Report discusses other possible reasons why less infill development has and will continue to occur within the County's UGAs. As discussed above, the most significant factor for less infill development within the UGAs—and thus the explanation for why more residential land exists within the UGAs than projected demand—is the issue of “legacy lots.”

Indeed, Thurston County identified legacy lots as the most significant factor affecting development within the UGAs. AR 2391-92. Specifically, the County states that these large existing lots, which tend to be larger than newly zoned properties, increase significantly the amount of undeveloped land within the County's UGAs. AR 2392. For example, the Report found that 24 percent of developed land in the UGAs was developed on oversized lots. *Id.* Also, according to the Report, 18 percent of all land within the County's

UGAs are oversized, legacy lots. *Id.* The County further noted that if these trends were to continue, the supply of land that could realistically be expected to be available for future development would decrease at a far greater rate. *Id.*

This is precisely the type of market factor the Legislature had in mind when providing local governments greater discretion in designating their UGAs. Thurston County, based on the local circumstances, explicitly considered potential development uncertainties, i.e. market factors, forcing the County to provide more urban residential land supply within its UGAs than projected demand.

The County properly utilized a market factor that was based on local circumstances. Thus, its actions were not clearly erroneous. Nevertheless, the Board ignored the proper deference owed to Thurston County when planning for growth, and overturned the County's decision. Moreover, the Board's decision was not supported by the evidence in the record. Accordingly, the Board's action must be reversed.

**B. The Growth Board Factually Erred by
Using Improper Figures When It Determined
Thurston County's UGAs Were Too Large**

The Growth Board also erred when it found that Thurston County's residential land supply within its UGAs exceeded projected demand over the

succeeding 20 years by 38 percent, and thus provided too much urban residential land versus projected demand. FDO at 26; AR 2564.

As discussed above, the GMA does not provide clear indication when a county has designated excessive land within its UGAs. Instead, counties are required to provide sufficient areas and densities to permit growth, based on the Office of Financial Management's 20-year population projection. RCW 36.70A.110(2). Moreover, counties are allowed to designate more land within its UGAs, i.e., a market factor, based on the local circumstances. *Id.*

As noted above, the APA directs when this Court may grant relief from Board decisions. The relevant APA provisions here are: (1) whether the Board's order is supported by substantial evidence, and (2) whether the Board erroneously interpreted and applied the law. *See* RCW 34.05.570(3)(e) and (d). Substantial evidence is evidence sufficient "to persuade a fair-minded person of the truth or correctness of the order." *Ferry County v. Concerned Friends of Ferry County*, 155 Wn.2d 824, 833 (2005).

Here, the evidence proves that the Board used incorrect figures when determining whether the County's residential land supply exceeded demand by 38 percent over a 20-year time period. In addition, by applying the incorrect number of years for which the County was planning, the Board erroneously applied the law.

The GMA requires local governments to “include areas and densities sufficient to permit the urban growth that is projected to occur . . . for the succeeding *twenty-year* period.” RCW 36.70A.110(2) (emphasis added). Thus, when deciding whether Thurston County included a sufficient amount of land within its UGAs, the Growth Board was required to look at the amount of residential land the county designated within the UGAs and the projected demand for the succeeding *20-year* period. *Id.*

In this case, the Board was required to decide whether Thurston County’s UGAs provided too much land based on projected growth between 2005 and 2025. Therefore, the Board was required to compare the amount of residential land supply within Thurston County’s UGAs in the *year 2005* with the projected demand for land through the year 2025.¹¹ See RCW 36.70A.110(2). Instead, the Board incorrectly compared Thurston County’s residential land supply in the *year 2000* with projected demand for land through the year 2025. See FDO at 26; AR 2564.

The Growth Board used projected figures from Thurston County’s 2003 Buildable Lands Report.¹² See AR 1912; *see also* FDO at 26; AR 2564.

¹¹ Thurston County’s comprehensive plan was adopted in November, 2004. AR 2542; FDO at 4. Thus, the County was planning for the succeeding 20 years, from 2005 through 2025.

¹² Because Thurston County used data from its 2003 Buildable Lands Report, it did not have data regarding existing urban residential land for 2005, the first year of the County’s
(continued...)

The Buildable Lands Report determined that existing urban residential land supply within Thurston County's UGAs in the *year 2000* was 18,789 acres. *Id.* The Report then estimated that, of the 18,789 acres of existing residential land within the UGAs, 11,582 acres would be developed by the year 2025. *Id.* The Board, in finding the County's UGAs noncompliant, stated that "[s]ince the supply of urban residential land (18,789 acres) significantly exceeds the projected demand for such lands over the course of the *20-year planning horizon* (11,582 acres), the County's UGAs fail to comply with RCW 36.70A.110." FDO at 26; AR 2564 (emphasis added).

Prior to this statement, the Board complimented the County's Buildable Lands Report calling it an "impressive and thorough analysis of land supply and demand in Thurston County." FDO at 20; AR 2558. Moreover, it called the County's choice to rely on the Buildable Lands Report's land supply and demand analysis a "sound one." *Id.*

The Board, however, faulted the County for allowing 38 percent more land within its UGAs over a 25-year planning period. According to the Board, the County erred by providing 38 percent more residential land within the County's UGAs "over the course of the 20-year planning horizon." FDO at 26; AR 2564. The Board erred because the numbers it cited to are based

¹² (...continued)
20-year planning process.

on existing land supply and demand over a 25-year planning period, not a 20-year planning period as required by the GMA. FDO at 23; AR 2561; AR 2395. Had the Board correctly used a 20-year horizon from 2005 to 2025, it could not have determined that 38% more land was available than demand.

The Board should have instead compared the amount of existing urban residential land in the *year 2005* with projected land demand through the year 2025 (11,582 acres). Because development in Thurston County continued to occur from the year 2000 through the beginning of 2005, the amount of existing urban residential land supply in the *year 2005* would have been less than the 18,789 acres that existed in the *year 2000*.

To find the amount of urban residential land existing in the year 2005, the Board could have looked at Table II-1 (Table) from the Thurston Regional Benchmarks Report. (AR 2395). Using the data in the table, the Board could have properly estimated how much urban residential land existed in the year 2005.

For example, according to the Table, the County designated 18,789 acres as residential land within its UGAs in 2000. AR 2395. The County further projected that demand for urban residential land through the year 2020

was 9,785 acres. *Id.* Therefore, the projected average annual demand for urban residential land was approximately 489 acres.¹³

To determine how much urban residential land existed in the year 2005, the Board could have simply multiplied 489 acres by five years, yielding a total of 2,445 acres. This amount (2,445 acres) would then be subtracted from the amount of existing land in the year 2000 (18,789) to come up with the total amount of existing urban residential land in the year 2005 (16,344 acres).

This correct figure (16,344 acres of existing land in 2005) should have then been compared with the projected amount of land demand through the year 2025 (11,582)—the last year of the County’s 20-year planning horizon. Based on these correct figures, the Board would have found that the percentage of projected amount urban residential land demand in the year 2025 would have been 29 percent,¹⁴ rather than 38 percent.

Although there is no bright line rule delineating when a county has allowed too much land supply compared with demand over its 20-year

¹³ Mathematically, this would have been $9,785 \text{ acres} \div 20 \text{ years} = 489.25 \text{ acres per year}$.

¹⁴ $11,582 \text{ acres (demand)} \div 16,344 \text{ (land supply)} = 71 \text{ percent (projected developed land)}$. Thus, *from 2005* until 2025, the County’s UGAs contained approximately 29 percent more residential land than actual demand. This amount is considerably less than the 38 percent (*from 2000* to 2025) the Growth Board found as being too excessive. FDO at 34-35; AR 2572-73.

planning horizon, the Board's ruling suggests that any amount over 25 percent does not comply with the GMA. *See* FDO at 18; AR 2556 (Growth Board phrased the issue in this case as whether Thurston County's UGAs substantially exceed the capacity necessary to accommodate the Office of Financial Management's population forecast, "even assuming a 25 percent market factor[.]"). However, the GMA provides no bright line market factor, nor does the GMA allow the growth boards to set such bright line rules. *See Viking Properties*, 155 Wn.2d at 129 (growth boards do not have authority to set bright line rules or public policy). Therefore, even if the County did allow for a 29 percent market factor, or even higher, there is no GMA provision prohibiting such an amount. Instead, when determining market factors, counties "shall permit a range of urban densities and uses" and "consider local circumstances." RCW 36.70A.110(2). Moreover, the GMA specifically grants local governments discretion "to make many choices about accommodating growth." *Id.*

That is precisely what Thurston County did in its comprehensive plan. Had the Board analyzed the proper planning time period (from 2005 to 2025), it would have found that the supply of residential land within the UGAs was well within the County's discretion to accommodate growth. As discussed above, Thurston County designated more land within its UGAs than projected

demand based on local circumstances, i.e., market factors. RCW 36.70A.110(2).¹⁵ Because the Board erroneously determined how much projected land would be remaining in the year 2025, this Court should reverse the Board's decision and force the Board to properly analyze projected supply versus demand for the succeeding twenty years.

C. The Only Case Dealing with UGA Market Factors is Distinguishable from This Case

This Court has yet to decide a GMA case dealing with counties setting the size of UGAs and utilizing land supply market factors. In fact, only one appellate case has discussed the issue of market factors, but it is distinguishable from this case. *See Diehl v. Mason County*, 94 Wn. App. 645 (1999).

In *Diehl*, Mason County appealed a Growth Board decision invalidating its comprehensive plan and development regulations. *Diehl*, 94 Wn. App. at 645. Specifically, the Growth Board ruled that Mason County's UGAs failed to comply with the GMA because the County decided not to use the Office of Financial Management's population projections. *Id.* at 654.

¹⁵ Also, as noted above, the Board praised the County's Buildable Lands Report, stating that its "land demand analysis . . . is well-supported and clearly explained" and "is an impressive and thorough. . . ." FDO at 20; AR 2558. Therefore, the Board does not quibble with the County's projected land supply and demand figures. Instead, the Board mistakenly determined that the County's market factor was too high based on faulty data it applied.

Instead, Mason County decided to use its own projections because it thought the Office Financial Management's projections were too low. *Id.* at 653. By doing so, Mason County conceded that its projections exceeded the statutory range. *Id.*

Moreover, the court found that Mason County failed to explain why it designated more land within its UGAs than projected demand. *Id.* at 654. Specifically, the court found that Mason County failed to explain its market factor. *Id.*

Unlike Mason County in *Diehl*, the record confirms that Thurston County's population projection was found to be within the Office of Financial Mangement's medium projection range. AR 2384. This fact alone distinguishes the lower court's ruling in *Diehl*. Thurston County's Buildable Lands Report based the amount of land within its UGAs on the Office of Financial Management's middle projected range. Therefore, the County met the requirement of providing sufficient areas and densities sufficient to permit urban growth.

In addition, unlike Mason County, Thurson County fully explained its market factor. AR 2391-92. Therefore, *Diehl* is inapposite to this case.

II

THE COUNTY'S COMPREHENSIVE PLAN AND DEVELOPMENT REGULATIONS COMPLY WITH THE GMA BY PROVIDING FOR A VARIETY OF RURAL DENSITIES

The Board ruled that Thurston County's comprehensive plan and development regulations failed to provide for a variety of rural densities. RCW 36.70A.070(5). The Growth Board reached this conclusion by creating public policy and a bright line rule that rural densities may be "no more intense than one dwelling unit per five acres." AR 2555; FDO at 17. This was error.

A. The GMA Provides Counties Broad Discretion in Establishing Rural Densities Based on Local Circumstances

The GMA requires counties to include in their comprehensive plans a rural element. RCW 36.70A.070(5). The "rural element" requires counties to designate: (1) land outside of the urban growth areas, and (2) land that is not designated for agricultural, forestry, or mineral resource uses. *Id.*

Within the rural element, the GMA requires counties planning for "rural development" to "provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses." *Id.* The GMA provides the standard for achieving a "variety of rural densities and uses." Specifically, counties may achieve a "variety of rural densities" through "clustering, density transfer, design

guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.”¹⁶

This portion of the GMA again expressly grants local governments discretion in establishing patterns of rural densities. See RCW 36.70A.070(5)(a) (“[B]ecause circumstances vary from county to county, in establishing patterns of rural densities . . . a county may consider local circumstances.”). However, counties must include a written record explaining

¹⁶ “Rural character” is defined as “patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- (f) That generally do not require extension of urban governmental services; and
- (g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

how the rural element harmonizes the GMA's goals and meets the statutory requirements. *Id.*

Here, Thurston County designated approximately 54 percent of the land outside of the UGAs for rural development. AR 775. Nearly 40 percent was designated as agriculture, forest, or mineral resources. AR 774. The remaining percentage was for public parks, the military, and rural commercial and industrial use. *Id.*

Contrary to the Board's decision, Thurston County explicitly designated a number of rural areas with varying rural densities. For example, the County's rural element designated a total of five rural areas with varying rural densities. AR 778-783. Specifically, those rural areas included:

- Rural residential and resource—one unit per five acres (parcels generally five acres *or larger* in size) (AR 778);
- Residential—one unit per two acres (where existing development has occurred with existing small farms) (AR 780);
- Residential—one unit per one acre (areas characterized by a predominance of existing one-acre *and larger* lots and existing small farms) (AR 780);
- Residential—two units per acre (areas with seasonal and year-round residences and resort/recreational activities) AR 782;
- Residential—four units per acre (areas with existing development) (AR 783).

The Board's decision that Thurston County's comprehensive plan failed to provide for a variety of rural densities is flawed for a number of reasons. First, the Board ignored the substantial evidence in the record. The County's comprehensive plan specifically discusses how the rural element harmonizes the GMA's goals and meets the rural element requirements.

For example, according to the County's comprehensive plan, rural area densities "will commonly be one dwelling unit *or less* per five acres." AR 774 (emphasis added). While some of the parcels will be developed at one dwelling unit per five acres, not *all* existing lots will be developed at that intensity. Many of these lots could remain undeveloped and therefore satisfy the GMA requirement of protecting the rural character by maintaining open space, reducing sprawl, and still provide opportunities for people to work and live in the rural areas. *See* RCW 36.70A.070(5)(c).

In addition to the rural areas zoned one dwelling unit or less per five acres, the County zoned a small percentage outside of the urban areas (5.5 percent) with densities greater than one dwelling units per five acres. AR 775. As noted in its comprehensive plan, the County designated a small portion of the rural area with densities greater than one dwelling unit per five acres based on local circumstances. AR 774. For example, the County's comprehensive plan explains that the higher rural densities are allowed "where there are

existing clusters of half-acre lots or in higher density resort-residential areas adjacent to water bodies.” *Id.* The plan further explains that “[a]reas of four units per acre are located only in those locations where this density already exists.” *Id.*

In addition, for each rural area designation, the County’s comprehensive plan explains the purpose, definition and characteristics, and location guidelines for each rural designation. AR 776-783. For example, the County’s comprehensive plan states that the purpose of the rural designations was to: (1) support the rural aspects of the County; (2) to protect areas with environmental constraints and preserve and buffer natural resource areas; (3) to allow low intensity residential uses which do not require a high level of public services and facilities; and (4) to protect the “rural character.” AR 773.

Here, the County designated the majority of the rural areas with densities at least one dwelling unit or less for every five acres. AR 778-79. Thurston County contained rural development by designating areas with higher densities only in the rural areas where existing development has occurred. AR 779. The County’s comprehensive plan further mentions that these higher density areas would be contained by designating the areas as “Limited Areas of More Intensive Development (LAMIRDs).” *Id.*; *see also* RCW 36.70A.070(5)(d). By designating these small rural areas as LAMIRDs,

the County will focus existing growth into limited rural areas so the rest of the County can retain its rural character.

Thus, the Growth Board erred in ruling that the County failed to provide for a variety of rural densities. As documented in its record, even though some densities were greater than one dwelling unit per acre and in some limited cases even four units per acre, the purpose of this designation was to keep as much of the rural character of these areas as possible by limiting the sprawl of any development. In fact, the County's comprehensive plan provides a written explanation of how the rural element harmonizes the planning goals and meets the GMA's requirement of protecting the rural character. AR 773-83. Thus, the County equally designated a variety of rural densities based on local circumstances.

**B. Thurston County's Comprehensive
Plan and Development Regulations Have
Achieved a Variety of Rural Densities
Through the Use of Innovative Techniques**

The Growth Board further erred when it ruled that Thurston County's use of innovative zoning techniques was not sufficient to satisfy the GMA requirement that it designate a variety of rural densities. FDO at 17-18; AR 2555-56. Indeed, contrary to the Board's finding, Thurston County's existing

and innovative development regulations contain a mechanism specifically allowed under the GMA to meet the variety of rural densities requirement.

AR 13.

As discussed above, the GMA allows counties to achieve a variety of residential densities through the use of innovative techniques. Specifically, the statute provides in pertinent part:

To achieve a variety of rural densities and uses, counties may provide for *clustering*, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized .” (Emphasis added.)

Thurston County’s Code meets this rural density requirement by allowing for clustering in the rural areas. For example, both Thurston County Code (TCC) 20.30 (Planned Residential Development) *and* 20.30A (Planned Rural Residential Development) provide *clustering* within the rural portions of the County. The purpose of the Planned Residential Development is to create “permanent open space,” “[p]reserve or create environmental amenities to those generally found in conventional developments,” and to “[p]reserve to the greatest possible extent, the natural characteristics of the land, including topography, natural vegetation, waterways, views, etc.” TCC 20.30.010. The ordinance applies to planned residential developments in areas zoned rural residential (one dwelling unit per five acres). TCC 20.30.020(1). Each

planned residential development is required to place at least 30 percent of the gross land areas for common space for the use of its residents. TCC 20.30.060.

In addition to the Planned Residential Development ordinance, Thurston County's Planned Rural Residential Development, or *clustering* ordinance, also achieves a variety of rural densities. *See* TCC 20.30A., *et seq.* According to the ordinance, the purpose "is to provide for residential development in rural areas in a way that maintains or enhances the county's rural character . . . retains large, undivided parcels of land that provide opportunities for compatible agricultural, forestry and other rural land uses; protects sensitive environmental resources" and "facilitates creation of open space corridors." TCC 20.30A.010. The Planned Rural Residential Development applies to land designated: (1) Rural Residential/Resource — One Dwelling Unit Per Five Acres (TCC 20.09A) and, (2) Rural Residential — One Dwelling Unit Per Two Acres (TCC 20.10).

Similar to the Planned Residential Development, the other *clustering* ordinance (Planned Rural Residential Development) requires each new rural residential development to contain a "resource use parcel" in order to provide open space and confine development. TCC 20.30A.040(1). For example, a planned residential development in an area zoned Rural Residential/Resource

and Rural Residential—Unit Per Two Acres is required to contain 60 percent of the proposed subdivision as a “resource use parcel,” which only allows agricultural and forestry practices, passive recreation, and natural areas, among other specified uses. TCC 20.30A.040(1)-(3). In addition to the resource use parcel, the *clustering* ordinance also allows new subdivisions in the rural portion of the county to designate portions of the subdivision for open spaces that qualify for density bonuses. *See* TCC 20.30A.050.

These clustering ordinances are precisely the type of “innovative techniques” the Legislature intended to provide local governments flexibility in designating and providing for a variety of rural densities. Thus, the Board’s ruling is not supported by the evidence. Moreover, the Board erroneously interpreted and applied the law.

C. The GMA Does Not Contain a Bright Line Rule Requiring Rural Densities to Be One Dwelling Unit per Every Five Acres

Last, the Growth Board exceeded its authority when it determined that rural densities can be no more intense than one dwelling unit per five acres. *See* FDO at 17; AR 2555. The Board, in rendering this decision, erred by ignoring this Court’s recent ruling in *Viking Properties* that Growth Boards do not have authority to make such bright line rules. 155 Wn.2d at 128-29.

In *Viking Properties*, a developer argued that the GMA imposes a “bright line” rule of four dwelling units per acre within UGAs. *Viking Properties*, 155 Wn.2d at 129. The developer in that case cited to a 1995 Central Puget Sound Growth Board ruling that set out this so-called “bright line” rule. See *Bremerton v. Kitsap County*, CPSGMHB No. 95-3-0039, 1995 WL 903165, * 35 (Oct. 6, 1995) (the Board “adopts as a general rule a ‘bright line’ at four net dwelling units per acre”). This Court in *Viking Properties* disagreed with the developer’s argument, stating that the Growth Boards “do not have authority to make ‘public policy’ even within the limited scope of their jurisdictions, let alone make *statewide* public policy.” 155 Wn.2d at 129.

This Court further explained that the Growth Boards are “quasi-judicial agencies that serve a limited role under the GMA, with their powers restricted to a review of those matters specifically delegated by statute.” *Viking Properties*, 155 Wn.2d at 129 (citing RCW 36.70A.210(6), RCW 36.70A.280(1); *Sedlacek v. Hillis*, 145 Wn.2d 379, 385-86 (2001)); see also *Skagit Surveyors & Eng’rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 565 (1998) (the GMA is not to be construed to confer upon a hearings board powers not expressly granted in the GMA).

Despite *Viking Properties*' clear language in this case, the Growth Board made its own bright line rule that rural densities greater than one dwelling unit per five acres are, by definition, not rural. AR 2555; *see* FDO at 17 ("Rural densities . . . are generally no more intense than one dwelling unit per five acres."). The Growth Board, in making this bright line rule, did not, and could not, cite to any GMA provision mandating a bright line rule that a "rural density" may not contain more than one dwelling unit per five acres. Conspicuously absent from the GMA is any bright line rule or definition stating that any densities more intense than one dwelling per five acres are *per se* not rural.

Thus, the Growth Board has committed an error of law by creating a GMA requirement that the Legislature did not. *See State v. Delgado*, 148 Wn.2d 723, 727 (2004) (courts "cannot add words to unambiguous statute when the legislature has chosen not to include that language."); *see also Viking Properties*, 155 Wn.2d at 129 ("[T]he growth management boards do not have authority to make 'public policy' even within the limited scope of their jurisdictions, let alone to make *statewide* public policy.").

As discussed above, the record demonstrates that Thurston County's comprehensive plan and development regulations meet the definition and requirements of rural development. AR 773-83. As permitted under the

GMA, the County allows rural development at greater densities in a small percentage of the county through clustered development. *See* RCW 36.70A.070(5)(b).

Because the Growth Board ignored this Court's clear language that the Boards do not have authority to make such bright line rules or statewide policy, this Court should reverse the Board's decision that Thurston County failed to provide for a variety of rural densities.

CONCLUSION

Thurston County properly designated and determined the size of its UGAs by including a reasonable land supply market factor. Moreover, Thurston County's comprehensive plan and development regulations provided a variety of rural densities. Unable to find the County's actions clearly erroneous, the Board should have deferred to the County's findings based on the County's local circumstances. Instead, disregarding the standard of review under the GMA, the Board created its own policy in the form of adding a bright line rule to the GMA's requirements, which the State Legislature had not included the Act.

Based on the foregoing this Court should reverse the Growth Board's
Final Decision and Order.

DATED: May 26, 2006.

Respectfully submitted,

RUSSELL C. BROOKS
ANDREW C. COOK

FILED AS ATTACHMENT
TO E-MAIL

By /s/ Andrew C. Cook
ANDREW C. COOK
WSBA No. 34004

Attorneys for Building Industry
Association of Washington, Olympia
Master Builders, and People for
Responsible Environmental Policies

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BY C. J. MERRITT

CLFRK

DECLARATION OF SERVICE

I, Janice Daniels, declare as follows:

I am a resident of the State of California, residing and employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action. My business address is 3900 Lennane Drive, Suite 200, Sacramento, California 95834.

On May 26, 2006, true copies of PETITIONER-INTERVENORS' OPENING BRIEF were e-mailed and placed in envelopes addressed to:

John Zilavy
Tim Trohimovich
1000 Friends of Washington (Futurewise)
1617 Boylston Avenue, Suite 200
Seattle, WA 98122
Attorneys for Respondents

Rob McKenna
Attorney General
Martha Lantz
Assistant Attorney General
Licensing & Administrative Law Division
P.O. Box 40110
Olympia, WA 98504-0110
Attorneys for Growth Management Hearings Board

Edward G. Holm
Thurston County Prosecuting Attorney
Allen T. Miller, Jr.
Jeffrey G. Fancher
Deputy Prosecuting Attorneys
2424 Evergreen Park Drive, SW
Suite 102
Olympia, WA 98502
Attorneys for Petitioner Thurston County

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 26th day of May, 2006, at Sacramento, California.

FILED AS ATTACHMENT
TO E-MAIL

/s/ Janice Daniels

JANICE DANIELS

Title 20 ZONING

Chapter 20.30 PLANNED RESIDENTIAL DEVELOPMENT

20.30.010 Purpose.

It is the intent of this section to:

1. Encourage imaginative design and the creation of permanent open space by permitting greater flexibility in zoning requirements than is generally permitted by other sections of this title;
2. Preserve or create environmental amenities superior to those generally found in conventional developments;
3. Create or preserve usable open space for the enjoyment of the occupants;
4. Preserve to the greatest possible extent, the natural characteristics of the land, including topography, natural vegetation, waterways, views, etc;
5. Encourage development of a variety of housing types;
6. Provide for maximum efficiency in the layout of streets, utility networks and other public improvements;
7. Provide a guide for developers and county officials in meeting the purpose and provisions of this section. (Ord. 11398 § 3 (part), 1997; Ord. 6708 § 3 (part), 1980)

Title 20 ZONING.

Chapter 20.30 PLANNED RESIDENTIAL DEVELOPMENT

20.30.020 Where permitted.

Planned residential development may be permitted in the following zoning districts consistent with the development standards in Section 20.30.050:

1. Chapter 20.09 (rural residential -- 1/5);
2. Chapter 20.15 (residential -- 3--6/1);
3. Chapter 20.17 (medium density residential -- 1--6/1);
4. Chapter 20.21A (residential -- 4--16/1);
5. Chapter 20.23 (McAllister geologically sensitive area). (Ord. 11398 § 3 (part), 1997; Ord. 10398 § 13, 1993; Ord. 7075 § 17, 1981; Ord. 6708 § 3 (part), 1980)

Title 20 ZONING

Chapter 20.30 PLANNED RESIDENTIAL DEVELOPMENT

20.30.030 Types of uses permitted.

1. Specific Types Permitted. In a planned residential development (PRD), the following uses are permitted, provided that they meet the standards and criteria established in this title:

- a. Those uses permitted as a matter of right in the underlying zone;
- b. Residential developments of all types as defined in this chapter;
- c. As a secondary use, uses permitted in neighborhood convenience may be permitted in a PRD subject to the limitations set forth in Chapter 20.22.

2. Other or Related Uses Permitted. Accessory uses specifically geared to the needs of the residents of the PRD such as motor vehicle or boat storage structures, or structures related to open space use, subject to the building and development coverage limitations set forth in the design standards hereof. (Ord. 11398 § 3 (part), 1997; Ord. 10595 § 47, 1994; Ord. 7103 § 7, 1981; Ord. 6708 § 3 (part), 1980)

Title 20 ZONING

Chapter 20.30 PLANNED RESIDENTIAL DEVELOPMENT

20.30.040 Relationship of this section to other ordinance provisions.

1. Zoning Requirements. The provisions of this title pertaining to land use of the underlying zoning district shall govern the use of land in a planned residential development.

The specific setback, lot size, height limits and other dimensional requirements are waived, and the regulations for PRD's shall be those indicated in Section 20.30.060.

2. Platting Requirements. A PRD shall be exempt from the specific design requirements of the Subdivision Ordinance, except that when any parcel of land in a PRD is intended for individual ownership, sale or public dedication, the platting and procedural requirements of the Subdivision Ordinance and applicable state laws pertaining to the subdivision and conveyancing of land and the preparation of maps shall be followed.

3. Public Hearing Required. For hearing examiner approval of PRD's, public hearings shall be held and notices thereof given as provided in Section 20.60.020.

4. Drainage and Erosion Control Plan. Planned residential development applications shall not be approved until a drainage and erosion control plan has been approved pursuant to Chapter 15.05 TCC. (Ord. 11398 § 3 (part), 1997; Ord. 9859 § 10, 1991; Ord. 6708 § 3 (part), 1980)

Title 20 ZONINGChapter 20.30 PLANNED RESIDENTIAL DEVELOPMENT

20.30.050 Development standards.

The following standards shall govern the interpretation and administration of this section:

1. Relationship of PRD Site to Adjacent Areas. The design of a planned residential development shall take into account the relationship of the site to the surrounding areas. The perimeter of the PRD shall be so designed as to minimize undesirable impact of the PRD on adjacent properties and, conversely, to minimize undesirable impact of adjacent land use and development characteristics on the PRD.
2. Site Acreage Minimum. The minimum site shall be one acre.
3. Minimum Lot Size. The minimum lot size provisions of other sections of the Zoning Ordinance are waived in a planned residential development, except that the minimum lot size requirements of the underlying zone shall serve as the criterion to determine the dwelling unit density of the total development.
4. Density. In a PRD, the hearing examiner shall authorize a dwelling unit density not more than twenty percent greater than that permitted by the underlying zone, rounded to the nearest whole number, provided that the open space amenities described in Section 20.30.060(6) are met.
5. Maximum Coverage. Building coverage and development of the site shall not exceed the percentage permitted by the underlying zone.
6. Landscaping Required. All common open space shall be landscaped in accordance with the landscaping plan submitted by the applicant and approved by the hearing examiner. Natural landscape features which are to be preserved, such as existing trees, drainage ways, rock outcroppings, etc., may be accepted as part of the landscaping plan.
7. Setback and Side Yard Requirements
 - a. Setbacks from the exterior boundary line of the PRD area shall be comparable to or compatible with those of the existing development of adjacent properties, or, if adjacent properties are undeveloped, the type of development which may reasonably be expected on such properties given the existing zoning of such properties or the county Comprehensive Plan and adopted subarea plans. In no event shall such setback be less than twenty feet.
 - b. Setbacks or Side Yards Between Buildings. The standard setbacks and yard requirements between buildings may be waived in a PRD. Buildings may have common walls and, therefore, built to the property line as in townhouse construction.

Wherever buildings are separated, a minimum distance of ten feet shall be maintained between such buildings.
8. Off-Street Parking. Off-street parking shall be provided in a PRD in the same ratios for types of buildings and uses as required for the underlying zoning district, and as described in Chapter 20.44.
9. Secondary Use Limitations.
 - a. Commercial uses are subject to site plan review procedures and shall be provided for in the application for the development within which the commercial use is to be integrated.
 - b. The gross floor area of the commercial use shall not exceed the product of fifty square feet multiplied by the number of dwelling units within the development.
 - c. Construction of at least thirty-five percent of the residences in the PRD must be completed before any building permits will be issued for the construction of commercial uses, except this shall not prohibit a sales office.
 - d. Commercial uses within a PRD shall be of a size and type to serve primarily the residents of the development, and shall be internally located to fulfill this function. (Ord. 11398 § 3 (part), 1997: Ord. 10595 § 48, 1994: Ord. 8034 § 14, 1985: Ord. 7103 § 9, 1981: Ord. 6708 § 3 (part),

1980)

Title 20 ZONINGChapter 20.30 PLANNED RESIDENTIAL DEVELOPMENT

20.30.060 Open space standards.

1. Common Open Space. Each planned residential development shall dedicate not less than thirty percent of the gross land area for common open space for the use of its residents.

2. Location.

a. The area proposed for open space shall be within the PRD and within reasonable walking distance of all dwelling units in the PRD.

b. Where practical, the proposed dedicated property shall be located adjacent to other established or planned park and recreational areas in adjacent developments, schools, or county parks; provided, that such dedication would increase the overall benefit to the residents of the subject PRD and conform to other criteria in the section.

3. Access.

a. All dwelling units within the PRD must have legal access to the proposed area for dedication at the time of final PRD approval. Private or access roads, trees or other landscaping may separate the area proposed for dedication. However, access should not be blocked by major obstacles such as arterials or collectors, canyons or ravines.

b. Areas dedicated for active recreational open space shall have reasonable access from street frontages. Design measures should accomplish the purposes of access and security.

4. Types of Open Space.

a. Land dedicated for open space should be usable for either (i) greenbelts that serve as a buffer between land uses, using existing vegetation, or an aesthetic amenity such as boulevard trees; (ii) active recreational activities; or (iii) for protecting environmentally sensitive areas such as wetlands.

b. Except as provided in subsection (4)(c) or (d) below, thirty percent of the dedicated open space area shall be suitable for active recreation. The topography, soils, hydrology, and other physical characteristics of the area proposed for active recreation shall be of such quality as to provide a dry, obstacle-free space in a configuration which is suitable for active recreation.

c. The percentage of active recreational areas may be increased to as high as fifty percent if it is determined that anticipated recreational needs will require a larger percentage. In increasing this percentage, the following standard should be used: the ratio of one acre to one hundred twenty-five residential units.

d. The percentage of active recreational area may be decreased to as low as zero if it is determined that: (i) inclusion of buffers or environmentally sensitive lands such as wetlands would better meet the open space needs of the residents of the subdivision; or (ii) meeting the standard would require detrimental grading or other disturbance of the natural setting.

5. Structures. Common open space may contain complimentary structures, such as a gazebo or maintenance equipment shed, and improvements as are necessary and appropriate for the benefit and enjoyment of residents of the PRD, provided that the building coverage of such building or structure combined with the building coverage of the residential structures shall not exceed the maximum permitted by the underlying zone.

6. Qualification for Density Bonus. The provision of improved recreational or parks facilities such as improved playfields, basketball and tennis courts, boat launches and fishing docks, or the preservation of unique natural features such as habitats of threatened or endangered wildlife or plant species, unique geologic formations, wetlands, and environmentally sensitive areas shall qualify the developer for the density bonus as described in Section 20.30.050(4).

7. Implementation.

a. The area proposed for open space shall be dedicated in common to the lot owners within the

plat or to a lot owner's association. Maintenance and operation of the dedicated open space shall be the responsibility of the lot owners.

b. The county may choose to accept dedication, maintenance and operation responsibilities when the area to be dedicated is either one or a combination of the following:

- i. Greater than ten acres;
- ii. Adjacent to an established or future county park or school grounds;
- iii. Is an access to a body of water greater than three acres in size;
- iv. Is an environmentally sensitive area;
- v. If the county feels it is in the public interest to accept dedications.

c. The dedication shall be identified on the master plan.

8. Improvements. The following improvements to the area proposed for dedication may be required prior to final approval of the PRD:

- a. Removal of construction debris and hazards;
- b. Rough grading and establishment of grass cover over those portions of the site suitable for playfields.

9. Equivalent Facilities. When areas proposed for dedication do not meet the criteria for dedication in Section 20.30.060(1), such land may be improved by grading, filling, landscaping, or with installation of recreation equipment so as to be equivalent in result to the intent of this chapter. Determination of equivalency shall be made by the development services department according to the following guidelines:

- a. The proposed land and improvements must create recreational opportunities generally equivalent to or greater than the land required for the residents within the PRD.
- b. The proposed land and improvements must not result in significant disturbance or alteration of an environmentally sensitive area, unless otherwise allowed by Thurston County.
- c. The proposed land and improvements shall be dedicated in accordance with Section 20.30.060(7).

10. Stormwater Detention Facilities. Stormwater detention ponds may be allowed by the county as part of dedicated open space subject to the following criteria:

- a. The detention pond shall be constructed so as to drain fully when precipitation is not occurring (i.e., no standing water may be left) unless the pond is designed as aesthetic amenity.
- b. The side slope of the detention pond shall not exceed thirty-three percent unless slopes are existing, natural and covered with vegetation.
- c. If detention facilities are located adjacent to or near a natural, year-round stream or wetland, these systems shall be left in natural or near-natural condition.
- d. The detention area shall be landscaped in a manner which is both aesthetic and able to withstand the inundation expected.
- e. Use of a dedicated open space area for stormwater detention shall not be acceptable if the detention area must be fenced or otherwise rendered unsuitable or unavailable for recreation use during dry weather.
- f. In the case of joint use of open space for detention and recreation, the lot owners or owners' association shall be responsible for maintenance of the detention facilities.

11. Rights and Duties. The owners of open space shall have the following rights which may be exercised in respect of such land, subject to restrictive covenants or other restrictions:

- a. The right to locate recreational facilities, such as tennis courts, swimming pools, picnic tables, and fireplaces accessory to picnic tables designed to be used exclusively for the use of residents of the development and their guests;
- b. The right to locate pedestrian paths, bicycle paths and bridle paths;
- c. The right to take whatever measures are reasonably necessary to protect and maintain such land, or land or property adjacent thereto, or to correct a hazardous condition posing a threat to life or limb;

- d. The right to conduct agricultural activities, including the selective harvesting of mature trees;
 - e. The right to regulate access to or entry on the open space land and duty to maintain such land.
- (Ord. 11398 § 3 (part), 1997; Ord. 8034 § 15, 1985; Ord. 6708 § 3 (part), 1980)

Title 20 ZONING

Chapter 20.30A PLANNED RURAL RESIDENTIAL DEVELOPMENT (PRRD)

20.30A.010 Purpose.

The purpose of this chapter is to provide for residential development in rural areas in a way that maintains or enhances the county's rural character; is sensitive to the physical characteristics of the site; retains large, undivided parcels of land that provide opportunities for compatible agricultural, forestry and other rural land uses; protects sensitive environmental resources; facilitates creation of open space corridors; and minimizes impacts of road and utility systems. (Ord. 11398 § 3 (part), 1997; Ord. 10398 § 14 (part), 1993)

Title 20 ZONING

Chapter 20.30A PLANNED RURAL RESIDENTIAL DEVELOPMENT (PRRD)

20.30A.020 Applicability.

Planned rural residential developments are permitted within the following districts consistent with the development standards in this chapter:

1. Long-Term Agriculture District (Chapter 20.08A);
2. Nisqually Agricultural District (Chapter 20.08C);
3. Long-Term Forestry District (Chapter 20.08D);
4. Rural Residential/Resource—One Dwelling Unit Per Five Acres (Chapter 20.09A);
5. Rural Residential—One Dwelling Unit Per Two Acres (Chapter 20.10). (Ord. 11398 § 3 (part), 1997; Ord. 10398 § 14 (part), 1993)

Title 20 ZONING

Chapter 20.30A PLANNED RURAL RESIDENTIAL DEVELOPMENT (PRRD)

20.30A.030 Permitted uses.

Same as the underlying district, subject to the limitations on land uses within the resource use parcel specified in Section 20.30A.040(3). (Ord. 11398 § 3 (part), 1997; Ord. 10398 § 14 (part), 1993)

Title 20 ZONINGChapter 20.30A PLANNED RURAL RESIDENTIAL DEVELOPMENT (PRRD)

20.30A.040 Resource use parcel requirements.

1. Establishment of a Resource Use Parcel. Each planned rural residential development shall contain a resource use parcel comprising as a minimum the following percentage of the proposed subdivision:

- a. Long-term agriculture district—eighty-five percent;
- b. Nisqually agriculture district—ninety percent;
- c. Long-term forestry district—seventy-five percent;
- d. Rural residential/resource—one unit per five acres district—sixty percent;
- e. Rural residential—one unit per two acres district—sixty percent.

2. Ownership. The resource use parcel may be owned by a homeowners association, corporation, partnership, land trust, individual, or other legal entity.

3. Use. The following uses of the resource use parcel are permitted, subject to any land use limitations in the underlying district:

a. Permitted uses:

- i. Agriculture, including forest practices;
- ii. Passive recreation;
- iii. Natural areas including, but not limited to, critical areas and associated buffers, and wildlife corridors;
- iv. Community and individual water systems, sewage system drainfields, and stormwater detention ponds and facilities serving the subdivision, subject to the standards in Section 20.32.070. Such facilities shall not be permitted in agricultural and forestry districts where they would significantly impede the agriculture or forestry use or potential for such use; and
- v. One single-family residence and accessory uses, including a home occupation, pursuant to Chapter 20.54, and farm housing pursuant to Chapters 20.08A, 20.08C, or 20.09A.

b. Special Uses. Only the following special uses are permitted in resource use parcels created in the rural residential/resource—one unit per five acres district and the rural residential—one unit per two acres district, subject to Chapter 20.54:

- i. Boat launches;
- ii. Riding stables and arenas;
- iii. Golf courses and associated uses;
- iv. Commercial campgrounds.

c. Special uses are not permitted when a density bonus has been granted.

4. A residence within the resource use parcel shall count toward the total number of residential units allowed.

5. Plat Restrictions. The limitations on the use and subdivision of the resource use parcel, as provided in Sections 20.30A.040(3) and 20.30A.080(2), shall be noted on the plat. If not all of the allowable density is used, the number of lots which may be created in the future shall also be noted on the plat. The limitations noted on the plat shall be effective until annexation to a city or town. (Ord. 11539 § 1, 1997; Ord. 11398 § 3 (part), 1997; Ord. 11025 § 19, 1995; Ord. 10398 § 14 (part), 1993)

Title 20 ZONING

Chapter 20.30A PLANNED RURAL RESIDENTIAL DEVELOPMENT (PRRD)

20.30A.050 Optional open space.

The subdivision may also include open space areas in addition to the resource use parcel described in Section 20.30A.040 above, in accordance with Chapter 20.32. Any such open space areas used for active recreational activities, buffers, and greenbelts, will qualify for a density bonus above the minimum thirty-five percent within the rural residential/resource--1/5 district, in accordance with Section 20.030A.060 below. Permanent open space may also qualify for an exemption from the requirement of a drainage plan, in accordance with Chapter 15.05 TCC. (Ord. 11398 § 3 (part), 1997; Ord. 10398 § 14 (part), 1993)

Title 20 ZONINGChapter 20.30A PLANNED RURAL RESIDENTIAL DEVELOPMENT (PRRD).**20.30A.060 Density bonus within rural residential/resource--1/5 district.**

1. Subdivisions established within the rural residential/resource--1/5 district, in accordance with this chapter, shall receive a density bonus of thirty-five percent for the resource use parcel required pursuant to Section 20.30A.040(1)(d).
2. This minimum bonus shall be increased to a maximum of sixty-five percent at the rate of one additional percent of allowable density for each additional one percent of resource use or open space area in excess of the minimum requirement (see chart below).

Resource Use/ Density Bonus Within
Open Space Parcel Rural Residential/
(percent of gross Resource--1/5 District
acreage of site) (percent)

60 35
65 40
70 45
75 50
80 55
85 60
90 65

3. The density bonus in terms of percentage shall be converted to the total number of allowable dwelling units as shown in the examples below. A dwelling unit is allowed for each whole number of units as shown in the examples.

Example: 7.5 acre property:

- a. $7.5 \text{ (acres)} \div 5 \text{ (1 unit/5 acre base density)} = 1.5 \times 1.35 \text{ (35\% bonus)} = 2.02$, resulting in 2 dwelling units;
- b. $7.5 \text{ (acres)} \div 5 \text{ (1 unit/5 acre base density)} = 1.5 \times 1.65 \text{ (65\% bonus)} = 2.48$; resulting in 2 dwelling units.

Example: 40-acre property:

- a. $40 \text{ (acres)} \div 5 \text{ (1 unit/5 acre base density)} = 8 \times 1.35 \text{ (35\% bonus)} = 10.8$, resulting in 10 dwelling units;
- b. $40 \text{ (acres)} \div 5 \text{ (1 unit/5 acre base density)} = 8 \times 1.65 \text{ (65\% bonus)} = 13.2$, resulting in 13 dwelling units.

4. The density bonus provisions of this section do not apply within the long-term agriculture district, the Nisqually agricultural district, the long-term forestry district, and the rural residential--1/2 district. The maximum number of residential units allowed within these districts shall comply with the density provisions of the underlying districts or, in the case of the rural residential--1/2 district, Section 20.30A.065 below.

5. No density bonus shall be granted where a special use is permitted or proposed to be located on a resource use parcel or any portion thereof.

6. Density bonus provisions of this section shall apply only to subdivisions of parcels of seven

and one-half acres or more. (Ord. 11539 § 2, 1997; Ord. 11398 § 3 (part), 1997; Ord. 10398 § 14 (part), 1993)

Title 20 ZONING

Chapter 20.30A PLANNED RURAL RESIDENTIAL DEVELOPMENT (PRRD)

20.30A.065 Density bonus within rural residential--1/2 district.

1. Subdivisions established within the rural residential--1/2 district shall receive a density bonus of thirty-five percent for the resource use parcel required pursuant to Section 20.30A.040(1)(e).
2. The density bonus in terms of percentage shall be converted to the total number of allowable dwelling units in the same manner as the examples in Section 20.30A.060(3); however, the density bonus shall not exceed thirty-five percent within this district.
3. No density bonus shall be granted where a special use is permitted or proposed to be located on a resource use parcel or any portion thereof.
4. Density bonus provisions of this section shall apply only to subdivisions of parcels of seven and one-half acres or more. (Ord. 11539 § 3, 1997; Ord. 11398 § 3 (part), 1997; Ord. 10398 § 14 (part), 1993)

Title 20 ZONINGChapter 20.30A PLANNED RURAL RESIDENTIAL DEVELOPMENT (PRRD)

20.30A.070 Development standards.

1. Minimum Lot Size. None, subject to compliance with applicable standards for sewage disposal and provision of water contained in Articles III and IV of the Thurston County Sanitary Code;
2. Setbacks. Setbacks from the exterior boundary of the site shall be the same as required in the underlying district. All other setback requirements shall be waived to allow flexibility in site design. However:
 - a. Individual buildings shall be separated by a minimum of ten feet, and
 - b. The hearing examiner or administrator may establish setbacks not to exceed one hundred fifty feet, as necessary to buffer agricultural or forestry activities from residential uses;
3. Maximum Coverage by Structures. Same as underlying district;
4. Maximum Building Height. Same as underlying district;
5. Subdivision Design--Resource Use Parcel.
 - a. Any prime agricultural soils (as identified in the Soil Survey of Thurston County) and Washington State Private Forest Land Grade 2 present within the proposed subdivision shall be contained within the resource use parcel unless the applicant demonstrates that:
 - i. The allowable density cannot be accommodated elsewhere within the proposed subdivision; or
 - ii. Within the rural residential/resource--1/5 district and rural residential 1/2 district:
 - (A) The size of the potential resource use parcel is not sufficient to sustain an economically viable resource use, or
 - (B) The resource use is not compatible with surrounding land uses.
 - b. In order to retain large, undivided parcels of land that provide opportunities to compatible agricultural and forestry uses and protection of sensitive environmental resources, the resource use parcel shall, to the greatest extent possible, be a single contiguous parcel and shaped so as to be usable for resource uses. Where the resource use parcel is intended for other uses, more flexibility is allowed in the shape of the parcel; however, the resource use parcel may not be narrow strips or small interspersed parcel within the residential cluster(s).
 - c. Resource use parcels that are used for agriculture, forestry or sensitive resource protection shall not be bisected by roads or easements where the physical conditions of the site would allow otherwise.
 - d. Where consistent with other provisions of this chapter, the resource use parcel shall be contiguous with any abutting resource use parcel, open space, greenbelt, agricultural lands, commercial forestry lands, public preserves, parks, or schools. Wildlife corridors shall be linked with other wildlife corridors abutting the proposed subdivision.
 - e. The subdivision shall be designed, to the extent consistent with other provisions of this chapter, to maximize the visibility of the resource use parcel and open space areas from adjoining collector roads, arterials, or state highways.
 - f. Native vegetation shall be retained in the resource use parcel to the extent that it is compatible with the intended use of the parcel and does not pose a risk to public safety.
 - g. Any single-family residence and accessory uses within the resource use parcel shall be sited to maximize resource opportunities on the remainder of the parcel.
6. Subdivision Design--Residential Lots.
 - a. The configuration and size lots shall be varied and blend with the natural features of the site in order to retain the natural, rural character of the site, particularly as viewed from public roadways.
 - b. Windfirm trees shall be retained where they would screen residences from collector roads,

arterials or state highways, unless they would unduly impede site development, be incompatible with the intended use of the resource use parcel, or pose a risk to public safety for motorists on those roadways and to private utilities.

c. A lot created for any existing residence on the property may be discontiguous from the remaining residential lots in the proposed subdivision.

d. Residential lots shall be grouped and not assembled in a linear configuration. A linear configuration refers to a site design for the residential portion of a development which may be described as long and narrow. Refer to Appendix Figures 19, 20, 21 and 22 for examples. Exceptions shall be granted at the discretion of the approval authority where unusual site conditions, such as wetlands, steep slopes, shorelines, or very narrow lots, warrant a linear configuration. Refer to Appendix Figures 23 and 24 for examples.

Explanatory note: The reasons for minimizing linear configurations are to promote the integrity of the resource use parcel by minimizing the extent of the residential cluster boundary or edge effect, and to retain the natural, rural character of the site, particularly as viewed from public roadways. Both farmers and foresters have long maintained that proximity of residences to their operations is one of the biggest threats to the continued viability of those industries in Thurston County. Impacts to critical areas are also reduced by minimizing residential boundary area. (Ord. 11539 § 4, 1997; Ord. 11398 § 3 (part), 1997; Ord. 11025 § 20, 1995; Ord. 10398 § 14 (part), 1993)